



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

Paper No. 8

COPY MAILED

JUL 01 2002

OFFICE OF PETITIONS

SENNIGER POWERS LEAVITT AND ROEDEL
ONE METROPOLITAN SQUARE
16TH FLOOR
ST LOUIS, MO 63102

In re Application of
Kevin Horner-Richardson, David Small and
Jesse Roberts
Application No. 09/821,868
Filed: March 30, 2001
Attorney Docket No. TDTD 10465.1

DECISION REFUSING STATUS
UNDER 37 CFR 1.47(a)

This is in response to the renewed petition, filed February 25, 2002, under 37 C.F.R. §1.47(a).

The petition under 37 C.F.R. §1.47(a) is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 C.F.R. §1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **Failure to respond will result in abandonment of the application.** Any extensions of time will be governed by 37 C.F.R. §1.136(a).

The above-identified application was filed on March 30, 2001, without an executed oath or declaration. Accordingly, on May 11, 2001, applicant was mailed a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted," requiring an executed oath or declaration in compliance with §1.63, and a surcharge for its late filing. This Notice set a two-month period for reply of July 11, 2001.

In reply, applicant filed a petition, petition fee and the surcharge for late filing of the declaration. To make timely the reply, a three month extension of time was also submitted. In support of the petition, applicants submitted the affidavit of Kevin D. Horner-Richardson, co-inventor, a copy of the assignment documents, correspondence to the non-signing inventor and a oath or declaration. The petition was dismissed on December 26, 2001.

In support of the renewed petition, rule 47 applicant submitted a supplemental declaration of facts from co-inventor Horner-Richardson, correspondence to co-inventor David Small and return receipt post card evidence.

A grantable petition under 37 C.F.R. §1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

The instant petition does not satisfy requirement (2). The declaration does not comply with 37 CFR 1.63. Specifically, Jesse A. Roberts made changes to the declaration without initialing and dating the changes. Furthermore, the last known address of David Small provided in the renewed petition differs from the address provided in the declaration. A declaration with the current last known address must be provided.

Rule 47 applicant has sufficiently established that the non-signing inventor refuses to execute the application papers.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
Arlington, VA

Telephone inquiries related to this decision may be directed to Petitions Attorney Charlema R. Grant at (703) 306-0251.



Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy